

# ORDINANCE COMMITTEE

## A G E N D A

TOWN OF CHINCOTEAGUE

November 8, 2006 - 5:30 P.M. – Council Chambers - Town Hall

CALL TO ORDER

ROLL CALL

AGENDA ADOPTION:

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1. Consider Adoption of the Revised Chapter 22, Article II, Noise Ordinance
2. Committee member comments

ADJOURN:

# MEMORANDUM

TO: Ordinance Committee Members

FROM: Robert Ritter, Town Manager

DATE: November 6, 2006

RE: Adoption of the newly revised Ordinance, Chapter 22, Article II, Noise Environment Ordinance

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The Police Chief has had some court cases thrown out of court because of our language in the noise portion of the environment ordinance that will require modification. The Police Chief and I have reviewed the Ordinance, Chapter 22; Environment, Article II, Noise and have revised certain section in bold and applied strike marks for deleted portions. It is staffs opinion and my opinion that the committee endorses a motion that would send this ordinance to the Mayor and Council for their possible endorsement.

“ Move to accept this revised environment ordinance, Chapter 22, article II, noise and send it to the Mayor and Council for their favorable endorsement.”

If you have any questions please feel free to give me a call.

## Chapter 22

### **REVISED 11/06/06 ENVIRONMENT\***

#### **Article I. In General**

Secs. 22-1—22-25. Reserved.

#### **Article II. Noise**

- Sec. 22-26. Definitions.
- Sec. 22-27. Authority.
- Sec. 22-28. Exemptions for nonprofit organizations.
- Sec. 22-29. Exemptions for governmental functions.
- Sec. 22-30. Measurement of noises.
- Sec. 22-31. Cease and desist.
- Sec. 22-32. Violation and penalties.
- Sec. 22-33. Injunctive relief.
- Sec. 22-34. Unreasonably loud noises prohibited.
- Sec. 22-35. Certain prohibited noises enumerated.
- Sec. 22-36. Construction noises.
- Secs. 22-37—22-60. Reserved.

#### **Article III. Nuisances**

##### Division 1. Generally

- Sec. 22-61. Prohibited generally.
- Sec. 22-62. Certain nuisances enumerated.
- Sec. 22-63. Responsibility of property owners, occupants and others.
- Sec. 22-64. Penalty
- Secs. 22-65—22-90. Reserved.

##### Division 2. Abatement

- Sec. 22-91. Inspections, investigations and complaints.
- Sec. 22-92. Right to enter private premises.
- Sec. 22-93. Notice to cease and desist.
- Sec. 22-94. Notice to abate condition; appeal.
- Sec. 22-95. Failure to comply with notice to abate.

**\*Charter reference**—Noise, abatement of nuisances, ch. 2, § 1(21), (35).

**Cross references**—Animals, ch. 10; buildings and building regulations, ch. 14; dangerous buildings, § 14-86 et seq.; storage tanks for inflammable or explosive substances, § 26-2; floods, ch. 30; parks and recreation, ch. 42; solid waste, ch. 46; streets, sidewalks and other public places, ch. 50; utilities, ch. 62; vegetation, ch. 66; waterways, ch. 70; zoning, app. A; land subdivisions and development, app. B.

**State law references**—Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.; stormwater management, Code of Virginia, § 10.1-603.3; local air pollution ordinances, Code of Virginia, § 10.1-1321; abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

- Sec. 22-96. Arrest for committing or maintaining nuisance.
- Secs. 22-97—22-125. Reserved.

#### **Article IV. Erosion and Sediment Control**

Sec. 22-126. Town subject to county ordinance.  
Secs. 22-127—22-150. Reserved.

#### **Article V. Cemeteries**

Sec. 22-151. Definitions.  
Sec. 22-152. Purposes and authority.  
Sec. 22-153. Prohibited acts.  
Sec. 22-154. Non prohibited acts.  
Sec. 22-155. Inspection.  
Sec. 22-156. Violation and penalties.  
Sec. 22-157. Injunctive relief.

## ENVIRONMENT

### ARTICLE I. IN GENERAL

**Secs. 22-1—22-25. Reserved.**

### ARTICLE II. NOISE

**Sec. 22-26. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*ANSI* means the American Standards Institute or its successor bodies.

*Daytime hours* means 7:00 a.m. to 12:00 a.m. midnight, local time.

*dB(A)* is the abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third octave band data.

*Decibel (dB)* means a unit of measure, on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this article, 20 micropascals shall be the standard reference pressure.

*Nighttime hours* means 12:00 a.m. midnight of one day through 7:00 a.m.

*Noise* means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.

*Person, firm or entity* means any individual, group of individuals, lessee, lessor, guest, licensee, firm, partnership, voluntary association or private or public corporation, specifically including any person in charge of or supervising any property owned or possessed by any such person, firm or entity.

*Sound level* means, in decibels, the weighted sound-pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971, Specifications for Sound-Level Meters. The terms "sound level" and "noise level" are synonymous.

*Sound-level meter* means an instrument meeting ANSI SI.4, 1971, Specifications for Sound-Level Meters, comprising a microphone, an amplifier, an output meter and frequency weighting networks, that is used for the measurement of sound-pressure levels in a specified manner.

*Source* means any person or property, real or personal, contributing to noise.  
(Code of 1977, § 12-10; Ord. of 6-21-2001)

**Cross reference**—Definitions generally, § 1-2.

**Sec. 22-27. Authority.**

This article is adopted pursuant to the authority contained in the Charter, chapter 2, section 1(48), (49) and (5), and Code of Virginia, § 15.2-1102.  
(Code 1977, § 12-22; Ord. of 5-15-1999)

**Sec. 22-28. Exemptions for nonprofit organizations.**

This article shall not apply to any function or activity and the noise emanating therefrom conducted by any nonprofit organization which secures a permit from the town manager, who may issue such a permit if, in his reasonable discretion, the public health and safety will not be impaired by the function or activity.

(Ord. of 5-15-1999, § 12-14)

**Sec. 22-29. Exemptions for governmental functions.**

This article shall not apply to the use of any machines or the noise emanating from the use thereof when operated or utilized by the town while performing municipal functions, such activities and noises being expressly exempted from this article.

(Ord. of 5-15-1999(1), § 12-15)

**Sec. 22-30. Measurement of noises.**

(a) ~~Wherever in this article any noise level is prohibited by or is to be determined by~~ decibel level **is mentioned, it shall be** the measurement of such emanating sound ~~shall be~~ conducted at the nearest corner of the main structure on the real estate owned, possessed, or being lawfully used by any affected party who makes complaint thereof. Such measurement shall be conducted at a height of at least three feet above ground and at least three feet from any reflecting surface. Any such prohibited decibel level will be exceeded when the sound level meter set for FAST response, using the A-weighting network, exceeds the specified-level

(b) Measurement equipment shall be sound-level meters complying with ANSI SI.4, 1983, American National Standard Specifications for Sound-Level Meters, ANSI SI.4a-1985, and amendment to ANSI SI.4, or IEC 651-1979, "Sound Level Meters", of at least type 2 quality and sensitivity, comprising a microphone, amplifier, output meter and frequency weighting network. The meter operation shall be as prescribed by the equipment manufacturer, from time to time.

*(Amended 02/19/04)*

(c) Measurement equipment operators shall be officers of the police department who have been trained in the proper use of the sound-level meter by the equipment manufacturer. Representatives of the manufacturer may also train those department officers who are certified instructors, as designated by the Commonwealth Department of Criminal Justice Services, who may then train other officers within the department.

(Ord. of 5-15-1999(1), § 12-16)

(d) **Wherever in this article mentions the fact that such emanating sound is plainly audible at a distance of Fifty (50) feet or more from said source thereof, shall be sufficient to create a presumption of fact that such noise is a loud, unnecessary or unusual noise or a noise that either annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others as prohibited by this Article, shall also be a instrument for measuring noise.**

**Sec. 22-31. Cease and desist.**

No prosecution shall be initiated under this article unless and until there has been a complaint by any affected person, firm or entity, excepting noises emanating from publicly used and/or owned property and as described in Sec. 22-35(3)(b) and (4), and such violating person, firm or entity has been advised of the violation of this article and such person, firm or entity has failed to cease and desist such unlawful noise. For the purposes of this section, any such warning to any such violating person, firm or entity shall

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be continuous and sufficient for the 30-day period then following as to the same noise or the same type or similar or like noise, and no further warning shall be required during such period.

(Ord. of 5-15-1999(1), § 12-17) (*Amended 02/19/04*)

### **Sec. 22-32. Violation and penalties.**

Any violation of this article shall constitute a misdemeanor and shall be punishable by confinement in jail for a period not to exceed 12 months and/or a fine of not more than \$500.00. (Ord. of 5-15-1999(1), § 12-18)

### **Sec. 22-33. Injunctive relief.**

In addition to any criminal penalty for the violation of this article, the town manager is further authorized on behalf of the town to initiate and seek injunctive relief in the circuit court of the county to prohibit any such unlawful noises as provided for in this article.

(Ord. of 5-15-1999(1), § 12-19)

### **Sec. 22-34. Unreasonably loud noises prohibited.**

(a) It shall be unlawful for any person to make, continue or cause to be made any unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the corporate limits.

(b) It shall be unlawful for any person, firm or entity to knowingly permit the making of any such unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, health, peace or safety of others upon any premises owned, possessed or under the control of any such person, firm or entity within the corporate limits.

(Ord. of 5-15-1999(1), § 12-11)

### **Sec. 22-35. Certain prohibited noises enumerated.**

The following acts and/or noises are declared to create and/or constitute unreasonably loud noises prohibited by this article, and it is expressly provided that such enumeration shall not be exclusive, and the failure to enumerate a specific act and/or noise shall not be deemed to exclude any such act and/or noise from this article:

- (1) Generally, district levels. The making of any noise at a sound/noise level exceeding that level permitted in decibels in the applicable zoning district of the town within the specified period, measured as follows, excepting such noises as are either expressly regulated by other sections of this article or exempted:

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime</i>
<i>Level (dBA)</i>		
R-1	65	55
R-2	65	55
R-3	65	55

  

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
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C-1	70	60
C-2	70	60

(Amended 02-19-04)

(2) *Horns, signaling devices, etc.*

- a. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any town street, way, avenue or alley, or other public place, except as a danger warning;
- b. The creation by means of any such horn or signaling device of any unreasonably loud or harsh sound;
- c. The sounding of any such horn or signaling device for an unnecessary or unreasonable length of time;
- d. The use of any horn or signaling device operated by engine exhaust; and
- e. The use of any horn or signaling device when traffic is for any reason stopped and such horn or signaling device is not being reasonably utilized as a danger warning.

(3) *Radios, phonographs, musical instruments, loudspeakers, etc.*

- a. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound on private property that is above the permitted decibel level as measured in a zoning district as specified in this section **in such a manner as is unreasonably loud as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time, with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.**
- b. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing of sound on the public streets or other public ways in such a manner as is unreasonably loud so as to disturb the peace, quiet and comfort of other persons or at a louder volume than is necessary for the convenient hearing of the individual carrying the instrument, machine or device or those individuals immediately adjacent thereto and who are voluntary listeners thereto. **For purposes of this subsection, the fact that such emanating sound is plainly audible at a distance of Fifty (50) feet or more from said source thereof, shall be sufficient to create a presumption of fact that such noise is a loud, unnecessary or unusual noise or a noise that either annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others as prohibited by this Article**
- c. Using, operating or permitting to be played, used or operated any radio, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound ~~which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any~~

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**location between the hours of 8:00 P.M. and 8:00 A.M. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure, or vehicle in which it is located .**

- d. **The using, operating or permitting to be played, used or operated of any loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure at a distance of fifty (50) feet from the building, structure, or vehicle in which it is located.**
- (4) *Yelling, shouting, hooting, whistling and singing.*
- a. **Yelling, shouting, hooting, whistling, or singing on the public streets or public areas or from private property at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any dwelling, motel, hotel, residence, business, or in the vicinity of any such noise, between the hours of 8:00 A.M. and 8:00 P.M., after having been warned to quit or cease such noise making. For purposes of this subsection, the fact that such emanating sound is plainly audible at a distance of Fifty (50) feet or more from the said source thereof, shall be sufficient to create a presumption that such noise is a loud, unnecessary or unusual noise or a noise that either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others as prohibited by this Article.**
  - b. **Yelling, shouting, hooting, whistling, or singing on the public streets or public areas or from private property at any time in such a manner as to be plainly audible at a distance of fifty (50) feet from the public street, public area, building, structure, or vehicle from which the noise emanates, between the hours of 8:00 P.M. and 8:00 A.M.**
- (5) *Operation of boats and other water vessels.* The operation of any boat or other water vessel with an outboard motor or with an inboard motor, unless equipped with an adequately muffled exhaust system. The use of any siren or other noise-producing or noise-amplifying instrument or mechanical device on a boat in such a manner as the peace and good order of the neighborhood is disturbed; provided, however, that nothing in this article shall be construed to prohibit the use of whistles, bells, or horns as signals as required by any state or federal law for the safe navigation of motorboats or vessels.
- (6) *Animals, birds, etc.* The maintaining of any animal or bird which, by causing frequent or long noise, shall disturb the comfort or repose of any person in the vicinity.
- (7) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper town authorities.
- (8) *Exhausts.* The discharge in the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (9) *Defect in vehicle or equipment.* The operation of any automobile, motorcycle or vehicle so out of repair, so equipped, or in such a manner as to create loud and unnecessary grating,

grinding, rattling or other noise.

- (10) *Loading or off-loading of vehicle or vessel.* The loading or off-loading of any vehicle or vessel creating loud and disturbing noise between the hours of ~~10:00~~ **9:00** p.m. and 7:00 a.m. on weekdays and between 6:00 p.m. and 7:00 a.m. on weekends, with the exception of the loading or off-loading of perishable products, and except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.
- (11) *Schools, courts, churches, hospitals, etc.* The creation of excessive noise on any street adjacent to any school, institution of learning, church, hospital, clinic, or public building, when such is in use, which unreasonably interferes with the workings of such institution or building, provided that conspicuous signs are displayed on such streets indicating that such is a school, church, hospital, clinic or other public building.
- (12) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.
- (13) *Grasscutters, tillers or other similar mechanical devices.* The operation of any grasscutter, tiller or other similar mechanical device utilizing a gasoline or diesel powered engine creating an emanating sound plainly audible beyond the property line of the property at which the device is being utilized, except between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, **and Sunday from 1:00 - 4:00 p.m. for the property owner(s), inclusive.**

(Ord. of 5-15-1999(1), § 12-12)

**Sec. 22-36. Construction noises.**

(a) The erection, excavation, demolition, alteration, or repair of any building or other improvement other than between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, **and Sunday from 1:00 - 4:00 p.m. for the property owner(s), inclusive,** is prohibited, except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.

(b) The making of any noises at a sound/noise level exceeding 89 decibels from any construction site, as measured as provided in this article, is prohibited at any time.

(Ord. of 5-15-1999(1), § 12-13)